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1   UNITED STATES PATENT AND TRADEMARK OFFICE
2   _____
3
4   BEFORE THE BOARD OF PATENT APPEALS
5   AND INTERFERENCES
6   _____
7
8   *Ex parte* DAVID J. LINEMAN and SCOTT R. WIERSCHEM
9   _____
10
11   Appeal 2007-3773
12   Application 09/966,006[1]
13   Technology Center 2100
14   _____
15
16   Decided: June 30, 2008
17   _____
18
19
20   Before LANCE LEONARD BARRY, ALLEN R. MACDONALD, and
21   CAROLYN D. THOMAS, *Administrative Patent Judges.*
22
23   THOMAS, C., *Administrative Patent Judge.*
24
25   DECISION ON APPEAL
26   I. STATEMENT OF THE CASE
27   Appellants appeal under 35 U.S.C. § 134 from a final rejection
28   of claims 1-56 mailed December 13, 2005. We have jurisdiction under
29   35 U.S.C. § 6(b).

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[1] Application filed September 28, 2001. The real party in interest is NetIQ
Corporation.

1   We affirm.

2

3   <div align="center">A. INVENTION</div>

4   Appellants invented a software program capable of creating and

5   managing security policies on a network. When a computer administrator

6   selects a set of security controls based on the selected policy, it

7   automatically communicates the controls to computer systems in the

8   network capable of understanding this information. The invention further

9   communicates this policy to individuals responsible for understanding the

10   policy via a software program and tracks their reading and understanding of

11   the policy via the same software. (Spec., Abstract.)

12

13   <div align="center">B. ILLUSTRATIVE CLAIMS</div>

14   The appeal contains claims 1-56. Claims 1, 11, 26, and 51 are

15   independent claims. Claims 1, 11, and 26 are illustrative:

16   1.   A method for managing a security policy for one or more
17   users in a network, comprising:

18   a) running a policy management program on a computer
19   in communication with the network;

20   b) enabling creation of a security policy document in a
21   portable representation language using the policy management
22   program, including selection and inclusion in the security policy
23   document of a plurality of data elements for communicating the
24   security policy to the one or more users and of at least one data
25   element for implementing the security policy on computer systems in
26   the network;

<div align="center">2</div>

1   c) enabling the one or more users on the network to view
2   the security policy document using the plurality of data elements for
3   communicating the security policy to the one or more users included
4   in the security policy document; and

5   d) receiving electronic data relevant to user viewing of
6   the security policy document using the policy management program.

7

8   11.   A method for managing a security policy for one or more
9   first computers in a network, comprising:

10   a) running a software program o a second computer in
11   communication with the network;

12   b) enabling creation of a security policy document using
13   the software program by enabling selection of security policies from a
14   set of opinions; and

15   c) automatically configuring the security policy
16   document to provide one or more technical controls for implementing
17   the security policy on at least one first computer.

18

19   26.   A method for managing a security policy for one or more
20   users and one or more first computers in a network, comprising:

21   a) running a software program on a second computer in
22   communication with the network;

23   b) creating a security policy document using the
24   software program; and

25   c) automatically configuring the security policy
26   document to create (i) a human-readable security policy document,
27   and (ii) a machine-readable security policy document containing
28   technical controls readable by at least one first computer.

29

C. REFERENCE

The single reference relied upon by the Examiner in rejecting the claims on appeal is:

Jacobson   US 6,735,701 B1   May 11, 2004
                                                (Filed Jun. 25, 1998)

D. REJECTION

The Examiner entered the following rejection which is before us for review:

Claims 1-56 are rejected under 35 U.S.C. § 102(e) as being anticipated by Jacobson.

II. PROSECUTION HISTORY

Appellants appealed from the Final Rejection and filed an Appeal Brief (App. Br.) on July 11, 2006. The Examiner mailed an Examiner's Answer (Ans.) on October 19, 2006. Appellants filed a Reply Brief (Reply Br.) on November 24, 2006.

III. ISSUES

Whether Appellants have shown that the Examiner erred in rejecting claims 1-56 as being anticipated by Jacobson.

IV. FINDINGS OF FACT

The following findings of fact (FF) are supported by a preponderance of the evidence.

Claim Construction

1. The Specification discloses that "the security policy document is represented using a structured data representation technique known as Extensible Markup Language (XML). However, other markup languages, such as . . . object languages, . . . or other portable representation languages may also be used." (Spec., ¶[0040].)

Jacobson

2. Jacobson discloses:

> The method provides the steps of electronically monitoring network user compliance with a network security policy stored in a database, electronically evaluating network security policy compliance based on network user compliance, and electronically undertaking a network policy compliance action in response to network security policy compliance.

(Abstract.)

3. Jacobson discloses a "need for network communications software programs that offers robust policy compliance assistance, policy effectiveness monitoring and reporting." (Col. 1, ll. 61-63.)

4. Jacobson discloses that "[t]he network policy compliance actions may include electronically implementing a different network security policy selected from network security policies stored in the database, generating

1   policy effectiveness reports, and providing a retraining module to network

2   users." (Col. 2, ll. 15-19.)

3   5. Jacobson discloses that the "network policies are generated by

4   guidelines created from employee feedback obtained during a training

5   session." (Col. 5, ll. 48-50.)

6   6. Jacobson discloses that the "policy training module 105 uses the

7   user's policy recommendations as a benchmark for other users to use during

8   policy creation/training sessions." (Col. 6, ll. 23-26.)

9   7. Jacobson discloses that "policy effectiveness system 100 includes a

10   policy resource 145 database . . . Materials included in the policy resource

11   database 145 include . . . a policy manual." (Col. 18, ll. 52-59.)

12   8. Jacobson discloses that "[t]he policy effectiveness system 100

13   includes an object library/object level licensing system . . ." (Col. 20, ll. 24-

14   26.)

15   9. Jacobson discloses that "[a]ll software is distributed with

16   compliance conditions or restrictions of its use . . ." (Col. 19, ll. 60-63).

17   10. Jacobson discloses that "new policy(s) are automatically added to

18   the policy effectiveness system and the organization's policy manual." (Col.

19   19, ll. 14-16).

20

21   V. PRINCIPLES OF LAW

22   "[A]nticipation of a claim under § 102 can be found only if the prior

23   art reference discloses every element of the claim . . . ." *In re King*, 801

1   F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik*

2   *GMBH v. American Hoist & Derrick Co.,* 730 F.2d 1452, 1458 (Fed. Cir.

3   1984)). "[A]bsence from the reference of any claimed element negates

4   anticipation." *Kloster Speedsteel AB v. Crucible, Inc.,* 793 F.2d 1565, 1571

5   (Fed. Cir. 1986).

6   "A claim is anticipated only if each and every element as set forth in

7   the claim is found, either expressly or inherently described, in a single prior

8   art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d

9   628, 631 (Fed. Cir. 1987). Analysis of whether a claim is patentable over

10   the prior art under 35 U.S.C. § 102 begins with a determination of the scope

11   of the claim. We determine the scope of the claims in patent applications

12   not solely on the basis of the claim language, but upon giving claims their

13   broadest reasonable construction in light of the specification as it would be

14   interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech.*

15   *Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim

16   must then be compared with the prior art.

17

18   VI. ANALYSIS

19   *Grouping of Claims*

20   **Group I**: In the Brief, Appellants argue claims 1-10 and 52 as a

21   group (App. Br. 4-6). In other words, for claims 2-10, and 52, Appellants

22   merely repeat the same argument made for claim 1. Thus, the Board selects

7

1 representative claim 1 to decide the appeal for this group. Accordingly, the

2 remaining claims in this group stand or fall with claim 1.

3   **Group II:** Appellants argue claims 11-15, 17, and 20-25 as a group

4 (App. Br. 6-7). For claims 12-15 and 21-25, Appellants repeat the same

5 argument made for claim 11. We will, therefore, treat claims 12-15, 17, and

6 20-25 as standing or falling with claim 11.

7   **Group III:** Appellants argue claims 26-51 as a group (App. Br. 7-8).

8 For claims 27-51, Appellants repeat the same argument made for claim 26.

9 We will, therefore, treat claims 27-51 as standing or falling with claim 26.

10   **Group IV:** Appellants argue claim 16 separately (App. Br. 8).

11 Because claim 17 depends from claim 16, we shall group claim 17 with

12 claim 16. We will, therefore, treat claim 17 as standing or falling with claim

13 16.

14   **Group V:** Appellants argue claims 18 and 19 as a group (App. Br. 9).

15 For claim 19, Appellants repeat the same argument made for claim 18.

16 Because claim 20 depends from claim 19, we shall also group claim 20 with

17 claim 18. We will, therefore, treat claims 19 and 20 as standing or falling

18 with claim 18.

19   **Group VI:** Appellants argue claims 53-56 as a group (App. Br. 9).

20 For claims 54-56, Appellants repeat the same argument made for claim 53.

21 We will, therefore, treat claims 54-56 as standing or falling with claim 53.

22   *See* 37 C.F.R. § 41.37(c)(1)(vii). *See also In re Young,* 927 F.2d 588,

23 590 (Fed. Cir. 1991).

1   *The Board's Claim Construction*

2   "Our analysis begins with construing the claim limitations at issue."

3 *Ex Parte Filatov*, No. 2006-1160, 2007 WL 1317144, at *2 (BPAI 2007).

4   Claims are given their broadest reasonable construction "in light of

5 the specification as it would be interpreted by one of ordinary skill in the

6 art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d at 1364 (Fed. Cir. 2004).

7   To determine whether Jacobson anticipates claims 1-56, we must first

8 determine the scope of the claims. Our reviewing court stated in *Phillips v.*

9 *AWH Corp.,* 415 F.3d 1303, 1315 (Fed. Cir. 2005), *cert. denied, sub nom.*

10 *AWH Corp. v Phillips*, 126 S. Ct. 1332 (2006): The claims, of course, do not

11 stand alone. Rather, they are part of "a fully integrated written instrument,"

12 *Markman*, 52 F.3d at 978, consisting principally of a specification that

13 concludes with the claims. For that reason, claims "must be read in view of

14 the specification, of which they are a part." *Id.* at 979. As stated in

15 *Vitronics*, the specification "is always highly relevant to the claim

16 construction analysis. Usually, it is dispositive; it is the single best guide to

17 the meaning of a disputed term." 90 F.3d at 1582.

18   We note that Appellants have identified the claimed term *"portable*

19 *representation language"* as a structured data representation including

20 markup languages and object languages (FF 1). Thus, we find that this term

21 includes any structured data format including object languages.

22

23

| 1 | *The Anticipation Rejection* |

2   "Having construed the claim limitations at issue, we now compare the

3   claims to the prior art to determine if the prior art anticipates those claims."

4   *In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1349 (Fed. Cir. 2002).

5

| 6 | *Claims 1-10, and 52* |

7   Appellants contend that "there is no disclosure or even a suggestion

8   [in Jacobson] of distinct data elements for implementing the security policy

9   on a computer." (App. Br. 5.)

10   The Examiner found and concluded that "the data element is vague as

11   to what constitutes a 'data element' in the claim language, and there is no

12   language in the claim to further limit the terminology of a 'data element'.

13   The Examiner is broadly interpreting the 'data element' as being just a

14   software program." (Ans. 10-11). We agree.

15   Jacobson discloses using software to electronically monitor

16   compliance with a security policy and electronically implementing an action

17   in response to compliance issues (FF 2-4). Thus, we find that Jacobson

18   discloses at least one data element (i.e., software) for implementing the

19   security policy on computer systems.

20   Appellants further contend that "while an HTML type provision of

21   information to remote locations executing on browser is inferred in

22   Jacobson, it does not follow that the HTML would disclose or suggest the

23   'security policy document' of Claim 1." (App. Br. 6.) In addition,

10

1 Appellants contend that the "'policy training module' and other modules of

2 Jacobson are not described as creating a specific 'security policy document'

3 that contains such HTML form information." (App. Br. 6.)

4   The Examiner found that "the features upon which Appellant relies

5 (i.e., HTML) are not recited in the rejected claim" (Ans. 13). We agree.

6   We find that Appellants' Claim 1 is far broader than what Appellants

7 are arguing. Claim 1 recites, *inter alia, "enabling creation of a security*

8 *policy document in a portable representation language."* As noted *supra*,

9 we found that a "portable representation language" includes any structured

10 data format including object languages. We further find that Claim 1 merely

11 requires "*enabling creation of*" not the actual creation of a security

12 document.

13   Jacobson discloses creating/generating policy training modules and

14 on-line policy manuals using user's recommendations as benchmarks

15 whereby the generation includes using an object library (FF 5-8). Thus, we

16 find that Jacobson discloses a "security policy document" (i.e., the training

17 modules and/or the on-line policy manual) in a "portable representation

18 language" (i.e., object). Furthermore, we find that *"enabling creation of"*

19 reads on Jacobson's gathering of user's recommendations to use for policy

20 creation (FF 6).

21   As such, we do *not* find that Appellants have shown that Jacobson

22 lacks the above-noted disputed features of claim 1. Instead, we find that

23 Examiner has set forth a sufficient initial showing of anticipation.

1 Therefore, we affirm the rejection of independent claim 1 and of claims 2-

2 10, and 52, which fall therewith.

3

4 *Claims 11-15 and 21-25*

5   Appellants contend that there is "no discussion or suggestion of

6 enabling creation of a security policy document by enabling selection of

7 security policies from a set of options anywhere in [Jacobson]." (App. Br.

8 7.) Appellants further contend that "even if all these characterizations of

9 Jacobs[o]n were accurate, they would not suggest creation of a security

10 policy document by selecting 'security policies from a set of options' as

11 recited in Claim 11. Instead, it is the employee feedback, not the hypertext

12 link selections, that would be used in Jacobs[o]n." (Reply Br. 3.)

13   The Examiner found:

14   In regards to selection of policies, it is disclosed by Jacobson that the
15   user is presented with a suggested network policy that the
16   organization wishes to implement, see column 5, lines 41-50. The
17   individual and group policy recommendation information is collected
18   and serves as a tool to dictate the creation of the security policy, see
19   column 5, lines 41-50 and column 6, lines 22-26.

20 (Ans. 16.) We agree.

21   Jacobson discloses using the user's policy recommendations as a

22 benchmark for others to use during policy creation (FF 6). Thus, we find

23 that Jacobson discloses *"enabling selection of security policies from a set of*

24 *options"* given that Jacobson allows the user to start with previously

25 submitted recommendations as a standard/benchmark.

1   As such, we do *not* find that Appellants have shown that Jacobson

2   lacks the above-noted disputed features of claim 11. Instead, we find the

3   Examiner has set forth a sufficient initial showing of anticipation.

4   Therefore, we affirm the rejection of independent claim 11 and of claims 12-

5   15 and 21-25, which fall therewith.

6

7   *Claims 26-51*

8   Appellants contend that Jacobson "does not include an anticipatory

9   disclosure of such particular recitations of inclusion of human and machine

10   information in a security policy document to provide security policy

11   management 'for one or more users and one or more first computers in a

12   network' as recited in Claim 26." (App. Br. 8.) Appellants further contend

13   that "no explanation is provided of how these alleged technical controls are

14   contained in a machine-readable security policy document created by a

15   security policy document 'automatically configured' to create such controls

16   in a machine-readable security policy document." (Reply Br. 3.)

17   The Examiner found that "Jacobson disclose of presenting

18   information to the user for viewing, or in a 'human-readable form', see

19   column 5, lines 37-50." (Ans. 17.) We agree.

20   We also found that Jacobson discloses providing a retraining module

21   related to the security policies to users (FF 4), which necessarily must be in a

22   human-readable format. As for the claimed *"machine-readable security*

23   *policy document containing technical controls readable by at least one first*

1   *computer,"* we find that such a limitation reads on any security policy

2   software program that controls a computer. Jacobson discloses software

3   programs that offer policy compliance assistance (FF 3), i.e., policy software

4   that controls a computer, and using software programs to electronically

5   implementing various compliance actions (FF 4). Furthermore, Jacobson

6   discloses that new policies are *automatically* added to the policy

7   effectiveness system (i.e., a machine-readable security policy document

8   containing technical controls) and the organization's policy manual (i.e., a

9   human-readable security policy document) (FF 10).

10   As such, we do *not* find that Appellants have shown that Jacobson

11   lacks the above-noted disputed features of claim 26. Instead, we find the

12   Examiner has set forth a sufficient initial showing of anticipation.

13   Therefore, we affirm the rejection of independent claim 26 and of claims 27-

14   51, which fall therewith.

15

16   *Claims 16 and 17*

17   Appellants contend that "there is no discussion related to distributing

18   detect rules in this excerpt [Jacobson] and Claim 16 is separately patentable

19   for at least these additional reasons." (App. Br. 8.) Appellants further

20   contend that "even though these new sections are discussed responsive to

21   Appellants' assertion that Jacobson does not disclose 'distributing detect

22   rules,' the comments referring to Column 5 of Jacobson at no point even

23   mention 'distributing detect rules.'" (Reply Br. 4.)

1   Claim 16 recites *"further comprising distributing detect rules to at*

2   *least one first computer."* Appellants' Specification describes "detect rules"

3   for verifying compliance of the computer systems with security policies

4   [¶[0010]).

5   As noted *supra*, Jacobson discloses software programs that offer

6   policy compliance assistance (FF 3). Furthermore, Jacobson discloses that

7   all software is *distributed* with compliance conditions or restrictions of its

8   use (FF 9). What is significant is that the *"distributing detect rules"* step in

9   claim 16 does not positively recite any relationship to any other step. Thus,

10   we find that Jacobson discloses *"distributing detect rules",* as set forth in

11   claim 16.

12   As such, we do *not* find that Appellants have shown that Jacobson

13   lacks the above-noted disputed features of claim 16. Instead, we find the

14   Examiner has set forth a sufficient initial showing of anticipation.

15   Therefore, we affirm the rejection of dependent claim 16 and of claim 17,

16   which falls therewith.

17

18   *Claims 18-20*

19   Appellants contend that "Claim 18 recites 'distributing' technical

20   controls to at least one first computer, which recitations are not addressed at

21   pages 18-19 of the Examiner's Answer." (Reply Br. 4.) Appellants further

22   contend that "implementing a different security policy does not disclose

15

1   distributing or converting technical controls or even, as discussed above,

2   teach technical controls." (App. Br. 9.)

3   The Examiner found that the "technical controls is interpreted in the

4   teachings of Jacobson as being responsible for electronically monitoring

5   network user compliance with a security policy and electronically evaluating

6   policy compliance." (Ans. 18-19.) We agree.

7   Further, we note that Appellants' Specification describes technical

8   controls as "data values or parameters in machine-readable form to

9   implement the security policy on the computer systems" (¶[0024]). Thus,

10   we find that Jacobson's electronically monitoring/evaluating of policy

11   compliance inherently includes distributing machine-readable parameters.

12   As such, we do *not* find that Appellants have shown that Jacobson

13   lacks the above-noted disputed features of claim 18. Instead, we find the

14   Examiner has set forth a sufficient initial showing of anticipation.

15   Therefore, we affirm the rejection of dependent claim 18 and of claims 19

16   and 20, which fall therewith.

17

18   *Claims 53-56*

19   Appellants contend that "Claims 53-56 include various recitations

20   related to particular data elements and platform control elements for

21   different operating system platforms. . . .the recitations of these claims are

22   clearly not disclosed in the excerpt from column 1 of Jacobson." (App. Br.

23   9.)

1   The Examiner found that Appellants "arguments fail to comply with

2 37 CFR 1.111(b) because they amount to a general allegation that the claims

3 define a patentable invention without specifically pointing out how the

4 language of the claims patentably distinguishes them from the references."

5 (Ans. 19.) We agree.

6   Furthermore, we find that in addressing the rejection, Appellants only

7 broadly address the rejection by highlighting portions of the claims (*see*

8 Reply Br. 5). Appellants have not contested before us what Jacobson

9 teaches according to the Examiner's positions. Patentability is therefore

10 urged to be based upon the same analysis set forth with respect to the

11 rejection of claims 1 and 11, which approach we have found unpersuasive.

12   As such, we find the Examiner has set forth a sufficient initial

13 showing of anticipation. Therefore, we affirm the rejection of dependent

14 claims 53-56.

15   VII. CONCLUSION

16   We conclude that Appellants have not shown that the Examiner erred

17 in rejecting claims 1-56.

18   Thus, claims 1-56 are not patentable.

19

20   VIII. DECISION

21   In view of the foregoing discussion, we affirm the Examiner's

22 rejection of claims 1-56.

1   No time period for taking any subsequent action in connection with

2 this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R.

3 § 1.136(a)(1)(iv) (2007).

4

5   <u>AFFIRMED</u>

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